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NOMINATION—FEDERAL COMMUNICATIONS COMMISSION

HEARING

BEFORE THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION UNITED STATES SENATE

NINETY-EIGHTH CONGRESS

SECOND SESSION

ON

NOMINATION OF DENNIS R. PATRICK, TO BE A MEMBER, FEDERAL COMMUNICATIONS COMMISSION

MARCH 26, 1984

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NOMINATION—FEDERAL COMMUNICATIONS COMMISSION

MONDAY, MARCH 26, 1984

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
Washington, D.C.

The committee met, pursuant to notice, at 9 a.m., in room SR-253, Russell Senate Office Building, Hon. Barry Goldwater presiding.

Staff members assigned to this hearing: Kathy Meier, staff counsel; Marguerite Ayers, professional staff member; and Tom Cohen, minority staff counsel.

OPENING STATEMENT BY SENATOR GOLDWATER

Senator GOLDWATER. The meeting will come to order.

The meeting this morning will be twofold. The first part of it will be on the nomination of Dennis R. Patrick to be a member of the Federal Communications Commission, and the second part will be to hear some witnesses on S. 2436, the reauthorization bill for the Corporation for Public Broadcasting.

Mr. Patrick, I want to apologize for the long delay in having your hearing, but I will be honest with you, I was playing politics. I had been made a promise by the White House about 3½ years ago, and I was just trying to see if they would keep it. They didn't, but any way, I am going to hold your hearing, and I don't think you will have any trouble.

You may proceed in any way you care to.

STATEMENT OF DENNIS R. PATRICK

Mr. PATRICK. Thank you, Mr. Chairman. I have a short opening statement which I would like to read, if I might.

Senator GOLDWATER. Fine.

Mr. PATRICK. I am pleased to be here this morning as President Reagan's nominee to serve on the Federal Communications Commission. I am honored by the President's expression of confidence in me, and I am grateful for this opportunity to explore my background and views with this committee.

I recognize that an opportunity to serve upon the FCC is a significant honor, carrying with it a grave responsibility. I am cognizant of the scope and the enormous complexity of the communications issues confronting the Commission and the Congress today. I am aware that there is much to learn about these issues. That process has begun.

For almost 2 years I served at the White House as Associate Director of Presidential Personnel for Legal and Regulatory Agencies. During this period I was able to secure a deeper understanding of the role of independent regulatory agencies in our Goverment, their relationship to Congress, and their relationship to the public they serve. While at the White House, I also became generally aware of the issues pending before the FCC today. After leaving the White House, I served for a brief period as Special Assistant to the Assistant Secretary of Commerce for Telecommunications and Information at the Department of Commerce. Since December 5, 1983, I have served as a Commissioner at the FCC pursuant to a recess appointment.

I can fairly state that I approach the issues facing the Commission with an open mind. At the same time, I approach all regulatory issues with certain philosophical presumptions. I would like to describe my philosophy in general terms.

The touchstone for regulatory decisionmaking is the public interest. No one of us has a monopoly on wisdom with respect to what constitutes the public interest. My own view is that the public interest can best be defined by the public itself. For this reason, I approach regulatory issues with a presumption in favor of regulation by competitive market forces where possible. Competition in a free market tends to maximize the public interest by providing a combination of goods and services reflecting consumer interests at competitive prices.

My presumption in favor of regulation by competitive market forces is subject to an important qualification. While in many instances deregulation is an appropriate means of achieving our regulatory objectives, we must never confuse the means with the end. Deregulation is not an end in itself. Our regulatory goal is consumer welfare, maximizing the public interest.

For this reason, I do not hesitate to support regulatory intervention where the public interest will not be protected by the market alone. Distinguishing the circumstances in which a market can self-regulate from the circumstances in which regulatory intervention is necessary is a recurring and essential exercise for the Commission.

If confirmed, I would like to strike an appropriate balance between my belief that regulation by vigorous competition and free markets will often best serve the public interest, and the need to retain regulatory control over portions of a complex and evolving telecommunications industry. In this effort, I would look forward to working very closely with Congress.

In closing, I will mention two areas to which I would give high priority if confirmed by this body. First, I would work to insure the existence of a vigorous and competitive communications marketplace. To this end, I would encourage the Commission to lower barriers to entry, to reduce licensing backlogs, and to expedite the process by which new technologies and licensees are authorized to enter the marketplace. Such efforts would benefit, among others, minority entrepreneurs, underrepresented in the broadcast industry today.

Second, I would make the preservation of diversity and freedom in the marketplace of ideas a high priority. The first amendment is

the cornerstone of freedom in a democratic society. My commitment to competition in the economic marketplace parallels a strong commitment to free and open competition in the marketplace of ideas.

I would be happy to answer at this time any questions that you may have, Mr. Chairman.

Senator GOLDWATER. Thank you very much, Mr. Patrick.

I have a statement by Senator Pete Wilson, which I would like to insert in the record.

Also, your responses to questions submitted by Senator Ernest Hollings.

I have just a few questions here. Following you, we have one more witness. We will get to him in just a moment.

The Commission has for a long time attached importance to local service. Does the Commission's authorization of direct broadcast satellites undermine the localism in your opinion?

Mr. PATRICK. In my opinion, it does not, Mr. Chairman. I share the Commission's historical commitment to localism. Obviously, DBS, direct broadcast satellite, is not a local delivery system, but I think it should be viewed as supplementing the local delivery systems rather than supplanting them.

I think that direct broadcast can serve the public interest in important ways. For one thing, direct broadcast satellite will be able to serve remote areas that might not be serviced by local delivery systems.

Senator GOLDWATER. I think the second part of your statement is most eminently correct. The great value of the satellite systems to me is the service they provide to sections of our country. Not here in the East where everything is sort of flat, but in the West where we have rather high mountains, canyons, and so forth, it is going to be very, very important. You know, of course, that we are going to be subject to court cases, and a lot of argument on this from several sources. I hope we will prevail.

You also stated that you would support regulatory intervention when the market alone does not protect public interests. Could you tell us a little bit more about that?

Mr. PATRICK. Yes, Mr. Chairman, I will be glad to. As I stated in my opening remarks, I think it is important to remember that deregulation may be an appropriate means to a certain end, but it is not an end in itself. As a result of which, I think it is incumbent upon the Commission to analyze the markets that we are called upon to regulate and determine where these markets are capable of self-regulation by competitive forces. Where they are not, I think that it is incumbent upon the Commission to maintain a regulatory presence.

Let me be more specific. The Commission is making every effort to move our telecommunications industry, the telephone industry more specifically, toward a competitive marketplace. Obviously, we are not there yet, as a result of which the Commission has to maintain a regulatory presence in the telephone industry, in long distance, specifically.

I think the Commission's recent decision to provide for a universal service fund to help supplement the cost of telephone companies in the rural areas, is an example of regulatory intervention

that I think is appropriate, precisely because we don't have an entirely competitive market in the telephone industry today.

Senator GOLDWATER. You have just answered another question, so we will scrub that one.

In this whole regulatory business, do you think the Commission has now, or should in the future if it doesn't have now, the power to—I hate to use the word "regulate" at this point, but I think I have to—regulate the content of television?

For example, I have on my desk upstairs a paper that shows the amount of crime shown on the three networks. It is rather surprising. And it's the type of crime, the kind of crime that we older people never would have thought of in our younger days. I think the general opinion of the American viewing public is that what we look at over the television is not in the best interest of America.

Do you think we have reached the point, or should reach the point where the Commission should have a right to step in and either regulate what the networks sell or maybe, better yet, license the networks so that they are responsible to the Federal Government? Today, they are responsible to no one. Do you have any thoughts on that?

Mr. PATRICK. Mr. Chairman, I am aware that you directed correspondence to Chairman Fowler with respect to this topic, the question of whether or not we could license the networks, or in any other way control what is broadcast by means of the network distribution system.

To tell you the truth, I haven't given that a lot of thought. I think it is an important concept. It is something that we should think about. I know that the chairman is preparing a response to your letter at this time. As I said, I have not given that specific question enough thought at this point to give you a definitive answer.

I think, as a legal matter, the question of whether or not the Commission can regulate the content of any broadcast is, as you know, Mr. Chairman, a very complex question that depends on the circumstances.

I must be candid with you and say that as a matter of policy, I am disinclined generally to have the Federal Government or any Federal agency get itself involved in content, if that can be avoided, which is precisely why I think that it is important for the Commission to do everything it can to insure that we do have a vigorously competitive marketplace that will be responsive to the public, without need for the Government to get involved.

Senator GOLDWATER. I am completely in accord with you. I don't want to see this regulation, but I believe the time is coming when, if we don't see a little better television on our sets, the public is going to demand it, and demand it in a way that we may have to get into it.

I don't want to get into it, but when you begin to read these reports that come across my desk—not all of them unbiased, and you wonder why we don't have an opportunity in this country to see the very, very best. That is why I am so high on public broadcasting where you see the best.

You have indicated that your regulatory philosophy is characterized by a presumption in favor of regulation by market forces. You

just in effect answered that. Unless you would like to elaborate a little more, there is no other need to answer.

Mr. PATRICK. Mr. Chairman, the only thing I might add is that—I guess, you are right, I have answered in part—if the market is capable of self-regulation, I think that it is important for the Commission to move out of the arena of unnecessary regulation, and there are many examples in recent years.

Senator GOLDWATER. Last year, the Senate passed S. 66, the cable telecommunications bill I sponsored. Related cable legislation is bogged down in the House. Recently, the FCC has indicated that it may preempt some local regulation of cable. Assuming that Congress does not pass cable legislation, what role do you think the Commission should play in setting up the proper limits of Federal and local regulation of cable?

Mr. PATRICK. Mr. Chairman, let me start by saying that I completely concur in the statement of policy which is indicated in S. 66. With respect to cable generally, I think that it is very, very important that we establish a national policy with respect to cable, that we avoid unnecessary regulation of cable, so that this new video service can enter the marketplace, so that consumers can benefit by this new video service.

I think cable needs to be allowed to compete. I am hopeful that Congress will in fact pass legislation consistent with S. 66 so that we can establish that national policy. If Congress is unable to pass such legislation, I think that it will be important for the Commission to continue to monitor the industry and to stand ready to get involved, if necessary, in order to further those policy goals, which I think are very well set forth in S. 66.

Senator GOLDWATER. Well, of course, we had the problem for 2 years in this committee of working out an agreement with the cities of America. We had it, we thought, completely worked out, with no problems, when all of a sudden it hit the House, and the cities, in effect, double-crossed what they told us in this body.

What I am afraid of is that if the Federal Government gets back into this, the cities are going to be the first ones to suffer. I don't think cable can compete with a market that is even partially controlled by the Federal Government. I would hope the House would pass something so that we could get into a conference and work out our rather minor differences.

I think that you are going to have to be ready, as a member of the Commission, probably to step back in this field because we cannot have partial regulation of communications. It is either all the way, or it is nothing. The regulations that come under the 1934 act and regulations that are required by the necessity of our control of the entire spectrum. I just mention that to you because I have been in correspondence with the chairman relative to what might happen if S. 66 goes down the tube.

Now we get into an interesting little subject, residential access charges. It looks like the question of whether or not to impose access charges on residential customers is not going to go away in the near future. How do you feel about this issue?

Mr. PATRICK. Mr. Chairman, as you know, this is probably one of the most complex subjects that the Commission has dealt with at

all. I have been spending a great deal of time getting myself up to speed with respect to this question.

I can say this at this point, I am generally supportive of the goals that are set forth in the access decision, those goals being generally to try to move the telephone industry toward a more competitive market structure in long distance, and to try to avoid uneconomic bypass, the bypass of local exchange facilities which would devastate the economics of the industry. I am generally supportive of those goals. I think we all are.

With respect to the access charge itself, to which your question refers, I have not come to any final decision with respect to the propriety of access charges, or with respect to what effect they would have on residential customers, and rural telephone companies.

I am glad that the Commission has decided to suspend implementation of the residential access charges and the single-line business access charges until we can look more thoroughly and more completely at those questions. I think that it is very important that we determine, before we impose those charges, what the effect is going to be on universal service, and what the effect is going to be, as I mentioned before, on the rural telephone companies, the small telephone companies, a subject I know you are interested in, Mr. Chairman.

So I will be looking with great interest at the comments that are being filed with respect to those two questions, and I will review them very carefully before I will vote to impose those access charges.

Senator GOLDWATER. I, frankly, don't see any great rush to charge into legislation at this time. I am rather besieged by requests for legislation, and I try to bring home to the writers of those letters that we, the Federal Government, are not the ones who are going to increase telephone costs. The telephone costs that you get at your home will be established by some commission in your State. They are different in the various States. I don't think, at the Federal level, that we are ready yet to know how far to move, how often to move, or what to do, because we have not had a chance yet to live under this newly created communications system. I hope that you will keep awake to that one.

Mr. PATRICK. I certainly will, Mr. Chairman.

Senator GOLDWATER. This is another issue that is rather hot on the back-end now, mobile telephones. It is my understanding that the FCC is considering whether or not to allocate spectrum for a new car telephone service, called PRCS. You are familiar with that, I suppose?

What is its current status at the FCC, and when do you expect a decision by the Commission? In this question would be, how do we award these licenses? We are now talking about the lottery system. I think we have some 1,300 applications for stations at this time, and I am not quite aware of the process that they are using.

I think that before a person or a company should even be placed on the lottery list, they should show complete financing and technical ability to run such a system. This, I believe, is the greatest step forward in telephone communications we have made in this centu-

ry. Have you participated in any hearings on the subject of lottery, or some other system?

Mr. PATRICK. Yes, Mr. Chairman; I voted in favor of an order deferring filing dates for applications until the Commission can resolve its outstanding inquiry or rulemaking to ask the question as to whether or not we should use lotteries with respect to cellular radio.

If I might, Mr. Chairman, I would like to go back to your original question about the PRCS service, and answer your question very specifically as to where we stand. As you know, PRCS stands for Personal Radio Communications Service, and it is akin to a cellular radio type of system, although it has much more limited range and the calls that can be placed over that service are more limited in duration.

To answer the question as to the status, that is in a rulemaking now, and we expect to have that matter concluded by early summer. So that decision will be made fairly quickly.

The second part of your question as to the system that we intend to use with respect to choosing the individuals for this PRCS service, I am not aware of whether a decision has been made with respect to that. The issue now is whether we are going to allocate spectrum for the service. I expect that we will, and I expect that that will be concluded by summer. The question of how we allocate the service is one that I don't think has been addressed. If it has, I am not aware of that. Lottery, I am sure, will be a possibility.

Senator GOLDWATER. There are about four different ways to award licenses. As I see it, as a layman, the lottery right now is the only one that you can use and not create law suits until hell runs out. I hope that in your next meeting, you could bring that up, if it is not brought up.

I have told the people who have complained to me about using the lottery that if they can come up with a better system, we will surely listen to it because I don't particularly like the lottery system in the awarding of spectrum.

I want to know the monetary background and the technical background before we pass these out, because you know that it is probably going to use the entire spectrum between roughly 150 to 175 megaHertz, and that is a lot of spectrum that a lot people would like to have. In fact, a lot of people would like to have the whole thing.

Senator Pressler has just come in and he is one of the strongest advocates we have of what I will call "The Boondocks Telephone System."

Larry, do you want to go ahead?

Senator PRESSLER. I have just a couple of questions, Mr. Chairman. I thank the witness, and I support him.

Maybe this has been covered already, and if it has been, you need not answer it again. We have two hearings scheduled in this subcommittee on AM, expanding the time of daytimers' time, one in Washington in early April, and one in South Dakota in mid-April. I know the FCC is planning to take that subject up.

Do you have any views on this matter? I know that some of the clear channels look upon this with a jaundiced eye, but the fact of the matter is, in my part of the country, it won't hurt them at all,

and we will be able to get some weather and news. At night, when I am driving in my State, I can only get Tulsa, Okla., or some other place, which I have nothing against, but I would rather know what is going on in my State.

How are we going to correct that problem, and what steps are you going to take?

Mr. PATRICK. Senator, I do have some views on this subject. I think that it is important for the Commission to do everything that we can to expand the hours of operation of AM now-daytime channels. As you know, in a recent report and order, the Commission expanded the hours of approximately 2,000 of the 2,300 daytime AM stations to allow them to operate 2 hours in addition in the evening. We provided for some additional broadcasting in the early morning hours before dawn, but for much fewer stations.

After that report and order was issued, we received numerous inquiries and, in fact, petitions for reconsideration. I can tell this committee this morning that that matter is being reconsidered. Our Chief of the Mass Media Bureau is doing everything he can to determine whether or not we can expand those hours even further.

My position, if I can summarize it, is that those hours ought to be expanded as much as possible consistent with, of course, the need not to unduly interfere with other licensees. I think that we can do better.

Senator PRESSLER. What about the business of the rural telephone co-ops, and their concerns about the interconnect? The rural telephone co-operatives feel that they are going to be left out of this new system as we go forward with the access charges, and so forth. Have you studied from the point of view of the rural telephone co-ops, and are you familiar with them?

Mr. PATRICK. Senator, I have given this question some consideration. Of course, I am focusing on all the many issues that are involved in access, and they are very complex indeed. I think this question of the effect of the access decision on the rural telephone companies is a very important one.

When the Commission made its decision to delay the implementation of access charges, it indicated that one of the questions we needed to give more serious consideration or additional consideration was the question of subsidies for rural telephone companies, precisely so that they wouldn't find themselves in undue difficulties when the access decision is finally implemented.

The chairman has directed the staff to draft an inquiry so that we can solicit additional information with respect to what might be done for the rural telephone companies. As you are probably aware, two of the suggestions are that the rural telephone companies be given an option of waiving the access charge in their particular area or, other than that, to provide for an additional supplement through the universal service fund for rural telephone companies with less than 50,000 lines. That was an arbitrary number to try to define the rural telephone companies.

I can assure you that that question is being taken very seriously at the Commission. We are looking at it right now. I will keep my eye on it.

Senator PRESSLER. The final question that I have is with regard to direct broadcast satellites. In many of our remote areas, the best

way that we can get TV is through a satellite, getting it off of a dish, but there is some resistance to this by the cables, the broadcasters, and the producers, because they wonder how they are going to pay for the programing. What is your solution?

Mr. PATRICK. I am not sure that I have a solution, Senator Pressler. Before you arrived, we did make reference to this briefly. My position on that is very supportive of DBS in general. I think that it is important that the Commission do everything it can to license new technologies that are going to provide different types of service and better quality of service for the public.

I think that the big advantage of DBS, or one of the big advantages of DBS is that it, in fact, can service remote locations that are not going to be able to be serviced by local delivery systems. So I am supportive, and I think that it is important that we move forward. There are always tradeoffs, and there are always costs. We just have to do the best that we can in terms of balancing the costs.

Senator PRESSLER. You have probably covered this, this is my last question, and you can put it in the record, if we don't have time.

The networks and everybody else say that they are spending more on covering politics. They said that they spent so many millions of dollars in sending people up to New Hampshire during the New Hampshire primary, but it was mostly reporters on talking, and analysts on talking, not very many politicians on talking, giving their ideas, unless they were the people giving analyses.

This goes to the question of keeping the cost of campaigns down. How can we get actual candidates on talking about their ideas more, and how can we change this thing so that the public can see actual candidates talking about their ideas. It seems as though the stations are frozen, and they get into all kinds of problems by putting somebody on. On the other hand, I think they would rather put their reporters on to tell us what is happening than putting the people who are doing the stuff on.

Do you have any thoughts on this, and if you have already covered it, do it for the record.

Mr. PATRICK. Senator, we did touch briefly on the question of programing and the networks. It is a very difficult problem indeed. I indicated earlier that I am presumptively disinclined to see the Commission or any Federal agency, for that matter, get involved in the programing decisions made by any licensee or by the networks.

I will have to give some thought to precisely what we can do about the problem that you identify. It is a difficult problem, and it is especially a difficult problem in that I don't think we want to see ourselves getting involved in making these program decisions.

I think that one of the things that we can do as a general matter is to make sure that we have as competitive a marketplace as possible so that the public can have effective input with respect to the type of things that the networks and other licensees program.

Senator PRESSLER. Thank you very much, Mr. Chairman.

[The biographical sketch, statement of Senator Wilson, and answers to questions of Senator Hollings follow:]

BIOGRAPHICAL SKETCH OF DENNIS ROY PATRICK

Address: 3027 Normanstone Terrace, N.W., Washington, D.C. 20008.

Date and place of birth: 6-1-51; Glendale, California.

Marital status: Married to the former Milinda Leigh McNeely.

Names and ages of children: None.

Education: I attended Occidental College in Los Angeles, California, between Sept. 1969 and June 1973. I attended the University of California at Los Angeles School of Law between September of 1973 and June of 1976. A Juris Doctor degree was awarded in June, 1976.

Employment record: (1) Since 12/5/83, I have served as a Commissioner on the Federal Communications Commission by virtue of a recess appointment.

(2) Between 10/27/83 and 12/4/83 I served as a Special Assistant to the Assistant Secretary of Commerce for Communications and Information.

(3) Between 12/6/81 and 10/26/83 I held the position of Associate Director, Presidential Personnel at the White House.

(4) Between my graduation from law school in June, 1976, and December 1, 1981, I was employed as a lawyer by the Law Offices of Adams, Duque & Hazeltine at 523 W. Sixth Street, Los Angeles, California. I was principally engaged in a business litigation practice.

Government experience: (1) With respect to employment by the federal government, please refer to my response to question number seven, subparts (1), (2), and (3).

(2) In addition, in the fall of 1975 while attending UCLA School of Law, I served as a law clerk to Justice William P. Clark of the California Supreme Court.

(3) During summer vacations between 1970 and 1974, I was employed by the Department of Harbors and Beaches, Huntington Beach, California.

Memberships: (1) Phi Beta Kappa; (2) California Bar, inactive status; (3) My wife and I attend the Georgetown Presbyterian Church.

Political affiliations: I am a registered Republican in the District of Columbia and was registered as a Republican in California. To the best of my recollection, in 1980 I contributed $25.00 to the Dean Dana for Los Angeles County Supervisor election Committee. In 1982 my wife and I contributed $50.00 to Republican National Committee and $50.00 to the Pete Wilson Senate campaign. In 1983, my wife and I contributed $50.00 to the Republican National Committee.

Honors and awards: I was elected to Phi Beta Kappa in 1973 and graduated from Occidental College magna cum laude.

Published writings: None.

STATEMENT OF HON. PETE WILSON, A U.S. SENATOR FROM CALIFORNIA

Mr. Chairman: Thank you for this opportunity to appear before your committee and introduce to you President Reagan's nominee to be a Commissioner on the Federal Communications Commission.

As one reviews the credentials of Dennis Patrick, it seems patently clear that this nation will be well served in the administration and execution of communications policy and law.

Dennis Patrick earned his law degree from the University of California at Los Angeles in 1976 after graduating Phi Beta Kappa from Occidential College, also in Los Angeles. He was an able and successful attorney in private practice for some five and a half years. Following that he served in the White House as Associate Director of Presidential Personnel for legal and regulatory agencies.

There are few better ways to learn the issues pending before our independent regulatory agencies than participating in the appointments decision-making process.

I think it is fair to say that Mr. Patrick's involvement with the FCC began during those White House days. Thus, this nominee brings with him a working knowledge of many of the complex matters with which the Commission must grapple, as well as a better than average understanding of the Administration's philosopy on these concerns—including the sometimes deceptively Byzantine issue of deregulation, which serves best when it promotes the expansion of market competition.

While serving as Special Assistant to the Assistant Secretary of Commerce for Communications and Information, Mr. Patrick further accumulated knowledge and insights in the communications field.

I have come to know Dennis Patrick as a thoughtful decision-maker with extensive background in public policy and an open mind to matters pending before the Federal Communications Commission. In my own case, I have been carefully studying a number of matters in which the FCC has an interest, such as a bill introduced by the Chairman of this Committee, Senator Packwood's "Freedom of Expression Act." I realize that the Fairness Doctrine dates back to 1934, if not earlier, and that

continuing developments over the past 50 years offer significant challenges to federal policymakers, challenges best responded to by those with a working background in communications and legal issues. Sifting through competing interests such as constitutionally guaranteed free speech, the right of the public to know, the high technology explosion, and a vociferous political arena is not an easy task. Yet it is one for which Dennis Patrick is well suited.

As the Commission continues to sink its collective teeth into deregulation proposals affecting a variety of communications concerns, it seems to me that distinctions need to be drawn between what deregulation is immediately in the nation's best interests and what others are still in need of further nurturing.

I believe that Dennis Patrick will effectively complement the existing structure and membership of the FCC. I maintain an intense interest in the activities of this important regulatory body and am confident that this nominee will contribute positively towad assisting the FCC in accomplishing its mission.

Again, Mr. Chairman, I thank you for your leadership and for the Committee's thoughtful attention to this appointment. I am confident that Dennis Patrick will meet your expectations, and I encourage this committee to act promptly in reporting the nomination to the full Senate for confirmation.

QUESTIONS OF SENATOR HOLLINGS AND THE ANSWERS THERETO

Question. What is your regulatory philosophy, and how will it serve the public interest?

Answer. My regulatory philosophy reflects a presumption in favor of regulation by competitive market forces, where possible. Generally, competition in free markets can most effectively identify and accommodate sometimes conflicting, and constantly changing, public demand for services, including communications services. However, I do not hesitate to support regulatory intervention where, for some reason, the public interest will not be protected by the market alone. Distinguishing the circumstances in which a market can self-regulate from those circumstances in which some regulatory intervention is necessary is a recurring and essential exercise for the Commission.

Question. How important is the entry of new services to accomplishing this philosophy?

Answer. Given my regulatory philosophy, I velieve that entry of new types of communication services, as well as entry of new providers of existing communications services, is of critical importance. Numerous competitors as well as open market entry and exit are important components of free and vigorous competition. They foster innovation and help to assure that existing competitors price and provide services competitively.

Question. How would you encourage the entry of new services and new service providers?

Answer. To encourage new new entry the Commission must emphasize two areas: lowering regulatory barriers to entry and reducing application backlogs.

Question. Do you support repeal of the Fairness Doctrine and Equal Time Rule? Do you think the political broadcasting markets are competitive?

Answer. I think it is incumbent upon the Congress and the Federal Communications Commission to constantly re-evaluate statutes and regulations, respectively, which affect the exercise of First Amendment rights by broadcast media. I have not yet had an opportunity to consider carefully and fully the effect of the Fairness Doctrine and the Equal Time rule on the exercise of First Amendment rights or the degree of competition in the political broadcasting market. Given the importance and complexity of these questions, I am not prepared to reach any judgments prior to further, careful consideration. I do believe, however, that an open debate on the subject at this time would be worthwhile. I therefore hope that the Congress will give these questions critical examination in connection with its consideration of S. 1917. The Commission might also facilitate discussion of these important questions by Notice of Inquiry. However, any inquiry by the Commission should be limited at this time solely to a discussion of the issues rather than a commencement of a rulemaking proceeding. I would impose such a limit for a number of reasons: first, I have not yet reached a conclusion on these rules' necessity or desirability; second, the Commission should first determine whether it has the discretion to take action or whether some of these rules are statutorily codified; and third, I am cognizant of language in the 1984 appropriations bill for the Commission indicating Congressional desire that the Commission not take action to weaken the political broadcasting rules currently in effect during fiscal year 1984.

Question. Do you support ownership and cross-ownership restrictions?

Answer. I am a strong supporter of deversity in broadcast media ownership. To this end, I support continued close scrutiny of multiple ownership. Rules like duopoly and one-to-a-market seem particularly appropriate to ensuring that broadcast markets are characterized by diversity and competition in the marketplace of ideas. However, rigid rules precluding ownership without reference to the relevant broadcast market, actual concentration, and new sources of competition may create artificial barriers to entry, preclude economies of scale, and stifle the competition and diversity they were designed to promote. As such, I believe the Commission's ownership rules should be examined periodically in light of a changing communications marketplace and with constant reference to the Commission's goal of preserving diversity and protecting the public interest.

Question. Do you support the FCC's policies developed over the past decade which have encouraged minority ownership? In particular, do you support the distress sale policy? the tax certificate policy? the additional credit or preference for minority applicants in comparative hearings for new licenses?

Answer. As I have stated above, I support the principal of diversity in the communications marketplace. Today minorities are still under-represented in the broadcast media, both in employment and in ownership. I am fully supportive of the Commission's policy of attempting to increase minority employment and ownership opportunities in order to promote diversity. In this regard, I believe the Commission should afford preference in the comparative process to minority applicants who will broaden community representation and increase the diversity of perspectives represented. I am insufficiently familiar with application of the Commission's distress sale and tax certificate policies to comment more specifically at this time, except to note that I am fully supportive of the goal which they promote: facilitating minority capitalization in acquiring broadcast properties.

Question. What steps would you take to improve and expand the existing minority ownership policies, including to other services within the ECC's jurisdiction?

Answer. I have not yet had an opportunity to study existing minority ownership policies sufficiently to determine how they might be expanded. However, in general terms, I would seek to increase minority ownership opportunities by lowering regulatory barriers to entry, licensing new technologies and expediting our licensing procedures with respect to existing technologies. I also think that minorities, having been largely excluded from the communications marketplace heretofore, will be especially benefitted by increasing the availability of information and financial assistance. As such, I would attempt to expand financial and informational assistance programs.

Question. Do you support the continuation of FCC regulation of industry EEO practices? What steps would you take to improve industry EEO regulations? Do you support increasing the threshold for requiring the filing of FCC Form 395 above five employees?

Answer. I am a strong believer in compliance with the equal employment opportunities laws of this country and at present foresee no reason why the FCC should discontinue its regulation of equal employment opportunity in the communications industry. I also support affirmative action programs to identify and recruit qualified minority applicants. With respect to increasing the threshold for filing Form 395 above five employees, I would want to carefully consider the potential costs and benefits before altering the Commission's present threshold. My decision would be based upon how the Commission can allocate its limited resources so as to maximize its effectiveness in enforcing EEO regulations.

Question. What steps would you take to improve internal EEO at the Commission?

Answer. As indicated in my answer to No. 8, I believe that affirmative action should be taken to identify, recruit and hire qualified minority applicants at the Commission. A review of the statistics that were presented at the Commission's most recent House Oversight hearing suggests that the Commission is taking steps to expand the number of minorities on its staff. I strongly support these efforts and pledge that I shall take an active role in continuing them.

Question. In 1981, Chairman Fowler and three other Commissioners asked Congress to repeal the Fairness Doctrine. In submitting this recommendation, the Chairman stated, "I recognize that it is Congress which must ultimately resolve the complex issues presented here." Do you agree with the Chairman's statement that repeal of any part of the Fairness Doctrine must be left to Congress?

Answer. I am not sure of the scope or context of Chairman Fowler's remark, so let me focus on your specific question regarding repeal of the Fairness Doctrine. Assuming that you are referring to repeal of Section 315 of the Communications Act,

the component parts of that section must be analyzed separately. Clearly, the equal opportunities provision of Section 315 is statutory and, therefore, can be repealed only by Congress. With respect to Section 315's reference to fairness doctrine obligations, there is a divergence of views as to whether the last sentence of Section 315, added in 1959 with the exceptions to equal opportunities, codified the fairness doctrine. One view holds that it did codify the doctrine; the other contends that the sentence simply recognizes the Commission-imposed fairness obligations but stops short of codification. Because Congressional intent is not clear on the face of the statute, I believe that Congress' true intent can be discerned only after a complete analysis of the legislative history. I have not yet had an opportunity to do this and, therefore, have not yet reached a conclusion as to whether Congress codified the fairness doctrine. If it did, then only Congress can repeal the doctrine. If it were determined that the fairness doctrine was not codified, Congress could, of course, step in and resolve the matter by amending Section 315.

Question. In establishing ownership restrictions in the broadcasting industry, do you believe the three major networks are sufficiently different from other station owners such that they may require different regulatory treatment?

Answer. There is no question that the three networks are different from other station owners in that the networks have a predominant position in the national distribution market for programming in this country. It may well be, therefore, that the networks warrant different treatment in the Commission's multiple ownership rules. It is incumbent on the Commission to consider this issue in assessing whether to make changes to the ownership rules. In fact, in its 7-7-7 Notice of Proposed Rulemaking, the Commission has asked for public comment on "whether an alternative regulatory scheme should apply to network acquisition of additional stations." [1] In order to reach a conclusion on this issue, I intend to examine the records in the pending 7-7-7 and related ownership rulemaking proceedings fully and carefully.

Question. What do you see as the relationship between ownership restrictions in the broadcasting industry, such as the 7-7-7 rule, and ownership of stations by minorities?

Answer. It has been strenuously argued to the Commission that repeal of the 7-7-7 rule would have an adverse affect on the ability of minorities to own broadcast stations. These arguments have been made in formal comments filed in the pending rulemaking proceeding, in a public en banc meeting held just last week, and in a letter recently received from a number of Congressmen. The Commission is strongly committed to increasing the opportunities for minority ownership, as I am personally. Thus, in reexamining the 7-7-7 rule and other rules related to ownership restrictions the Commission must consider the effect that repeal or modification will have on opportunities for minority ownership. In doing so, we will need to weigh the argument that repeal will cause prices to increase such that they are out of range of most minorities against the argument that the scramble to buy into the top markets will result in increased sales in other markets that will open up opportunities for minority ownership not currently existing. In addition, some argue that repeal of this rule might make it easier for minorities to acquire investors seeking equity interest in broadcast properties. I intend to study these and related arguments closely so that I may reach a decision in the 7-7-7 rulemaking that will not impeded minority ownership efforts.

Question. How do you view the relationship between the Congress and the FCC? Do you see any limits to Congressional oversight?

Answer. The FCC was created by Congress. As such, authority of the Commission is derived from Congress, and Congress retains ultimate control over Commission actions by its ability to modify, repeal or codify Commission decisions. In this sense, there are no limits to Congressional oversight. Similarly, I see no limits to Congress' ability to hold oversight hearings. I understand that there is a difference of opinion as to whether, as a theoretical matter, the Commission can withhold certain documents from Congress on a claim of priviledge. I have not studied the legal bases of this argument. I can state, however, that it is my hope and intention to cooperate fully with Congress in exchanging information.

Senator GOLDWATER. I think that this is all we have for you. We want to thank you very much for coming down here. Although the whole committee is not here, they will be polled, and hopefully

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[1] Notice of Proposed Rulemaking in Gen. Docket No. 83-1009 at ¶ 59, FCC 83-440, released October 20, 1983, 48 Fed. Reg. 49438 (October 25, 1983), corrected 48 Fed. Reg. 50907 (November 4, 1983).

sometime today we can send the good word down to you. In the meantime, we have another gentleman here to testify, Mr. Allen S. Hammond, chairperson of the Communications Task Force of the National Conference of Black Lawyers.

You are welcome, Mr. Hammond. You may take the seat and say anything that you would care to.

STATEMENT OF ALLEN S. HAMMOND IV, CHAIRPERSON, COMMUNICATIONS TASK FORCE OF THE NATIONAL CONFERENCE OF BLACK LAWYERS

Mr. HAMMOND. Thank you, Mr. Chairman.

Mr. Chairman and members of the committee, my name is Allen Hammond. I come before you today in my capacity as chair of the Communications Task Force of the National Conference of Black Lawyers.

The task force is a nonprofit national affiliate of NCBL. It is composed of telecommunications attorneys and professionals. The task force seeks to assure the continued viability of minority participation in American society, and minority involvement in telecommunications as citizens, consumers, and as owner/producers. To this end, we testify before Congress, file comments in various rulemakings before the Commission and, when necessary, litigate before the courts.

On behalf of the task force, I thank you for the opportunity to testify regarding the confirmation of Dennis Patrick to be a Commissioner of the Federal Communications Commission.

As you are aware, the current FCC has a significant number of rulemakings and assorted other matters before it as a result of its professed reexamination of many of the fundamental policies upon which regulation in the public interest is based. Policies and rules governing limitations on media ownership, balanced presentation of information to the public, media ownership by minorities, employment of minorities and women in broadcasting and cable, and the availability of affordable telephone service are all presently under review. The ultimate outcome of the FCC's deliberations will have a profound effect upon how and to what extent minorities will continue to participate in the political and economic processes of this country.

As you no doubt are also aware, there is a growing perception and concern that the FCC has no real desire to fairly address and respond to the clearly articulated concerns of the public interest community. Some parties have alleged that at least one member of the Commission approaches each issue before him from a well-publicized ideological bias which is not susceptible to reason.

What has this to do with Mr. Patrick? Simply put, does he come to the Commission with an open mind?

The Communications Act of 1934 requires the Commission to assure the provision of wire and radio service to "all the people of the United States." This requirement cannot be met if significant portions of American society cannot receive a fair hearing from Government officials charged with the responsibility for protecting the public's right to service. Will Mr. Patrick's mind and door be open?

What are Mr. Patrick's current positions on minority ownership of new and established telecommunications technologies; on equal employment opportunity in the wire and radio media for minorities and women; on sections 312(a)(7) and 315 of the Communications Act of 1934; on structural regulation and concentration in media ownership?

The committee should require Mr. Patrick to state his current positions for the record, if he has not done so already.

Finally, what is the EEO record of the agencies for which Mr. Patrick was responsible in his prior positions?

The task force believes that the answers to these questions will provide some indication of just what type of public servant Mr. Patrick will be. We respectfully request that the committee require Mr. Patrick to respond.

Senator GOLDWATER. Thank you, Mr. Hammond, we will do just that. We will turn this letter over to Mr. Patrick and ask him to answer in any way that he thinks proper and suitable.

I think that you might be interested to learn that Senator D'Amato of New York has introduced legislation to establish a Commission to oversee the type of thing that you have outlined in your letter.

We, on this committee and through our association with the FCC, feel that the problem is—I won't say adequately taken care of, but is being taken care of and it is getting better.

I don't know myself the answers to your questions, and I am going to ask the staff to find out if there isn't some way that we can find out what is the percentage of minority, women, and so forth, occupying, not just the spots that one sees on television, but the spots in the background that make up the moving forces of the communications subject.

I wondered if you had any specific questions that you wanted to ask.

Mr. HAMMOND. The task force appreciates the Senator's concern. There are no specific questions which I would like to ask this morning, only because many of them concern issues that are currently involved in various rulemakings, and I wouldn't want to cause Mr. Patrick to move outside of his responsibility as a Commissioner on matters that he is presently involved in.

I would like, however, to request that the committee attach, as part of my testimony, two items. One is a newspaper article from the Wall Street Journal, Friday, March 23, 1984, entitled, "Entertainment Broadcast Firms Are Expected To Be Takeover Targets if FCC Eases Curbs." This article concerns the seven station rule, and the current proceeding before the Commission on the rule. Also an article from the Catholic University law review on minority ownership and the FCC's deregulation policies.

Senator GOLDWATER. Both of those articles will be submitted for the record.[1] Thank you very much, Mr. Hammond. It was a pleasure having you here.

[The following information was subsequently received for the record:]

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[1] The articles referred to have been retained in the committee files.

RESPONSE OF DENNIS R. PATRICK TO QUESTIONS OF ALLEN S. HAMMOND, IV, NATIONAL CONFERENCE OF BLACK LAWYERS

The following are my responses to the questions asked by Allen S. Hammond IV, Chairperson of the Communications Task Force of the National Conference of Black Lawyers, in his testimony before the Senate Commerce Committee. As Mr. Hammond noted at the hearing, many of his questions are the subject of pending rule-making proceedings at the FCC. My answers to those questions, therefore, are necessarily general.

Question. Does Mr. Patrick come to the Federal Communications Commission with an open mind and an open door?

Answer. Yes. As I specifically indicated in my opening statement to the Committee, I approach regulatory issues with an open mind. Although I am presumptively in favor of self-regulation by market forces, I have also stated that self-regulation will not always work to maximize the public interest. It is the public interest that it is our ultimate goal, and I address the question of how to best achieve that goal in each case with an open mind.

Since coming to the Commission, I have tried very much to maintain an open door policy, in order to hear the concerns and opinions of all persons affected by Commission actions. I have already met with a number of individuals and groups with divergent perspectives. In addition, the Commission held an en banc meeting just last week to permit any interested person or organization to address the Commissioners as a group. After that meeting I met Mr. Hammond (who was one of the participants) and we resolved to get together in the near future to discuss his concerns. I intend to continue my open door policy.

Question. What is Mr. Patrick's current position on minority ownership of new and established telecommunications technologies?

Answer. Minorities are currently underrepresented in their ownership of broadcast media. I fully support the Commission's policy of attempting to increase minority ownership opportunities in order to promote diversity, both in traditional and in the newly emerging broadcast technologies. In this regard, I believe the Commission should afford preference in the comparative process to minority applicants who will broaden community representation and increase the diversity of perspectives represented. In addition, I am fully supportive of the Commission's goal of facilitating minority capitalization in acquiring broadcast properties. I also think that minorities, having been largely excluded from the communications marketplace heretofore, will be especially benefited by increasing the availability of information and financial assistance and by the expeditious approval of licensing of new technologies. As such, I intend to pursue these policies vigorously.

Question. What is Mr. Patrick's current position on equal employment opportunity in the wire and radio media for minorities and women?

Answer. I am a strong believer in compliance with the equal employment opportunity laws of this country. I therefore support continued FCC regulation of equal employment opportunity in the communications industry. I also support affirmative action programs to identify and recruit qualified minority and women applicants.

Question. What is Mr. Patrick's current position on sections 312(a)(7) and 315 of the Communications Act of 1934?

Answer. I think it is incumbent upon the Congress and the Federal Communications Commission to constantly reevaluate statutes and regulations, respectively, which affect the exercise of First Amendment rights by broadcast media. I therefore hope that the Congress will give these questions critical examination in connection with its consideration of S. 1917. I have not yet had an opportunity to consider carefully and fully the effect of the Fairness Doctrine, the equal opportunities rule or the reasonable access provision on the exercise of First Amendment rights or the degree of competition in the political broadcasting market. Given the importance and complexity of these questions, I am not prepared to reach my judgments prior to further, careful consideration. I would note, however, that the equal opportunities rule in Section 315 and the reasonable access provision in Section 312(a)(7) are statutory and, therefore, not properly the subject of reconsideration by the Commission; only Congress can repeal them. With respect to Section 315's reference to fairness obligations, there is a divergence of views as to whether the last sentence of Section 315, added in 1959 with the exceptions to equal opportunities, codified the fairness doctrine. One view holds that it did codify the doctrine; the other contends that the sentence simply recognizes the Commission-imposed fairness obligations but stops short of codification. Because Congressional intent is not clear on the face of the statute, I believe that Congress' true intent can be discerned only after a complete analysis of the legislative history. I have not yet had an opportunity to do this and,

therefore, have not yet reached a conclusion as to whether Congress codified the fairness doctrine. If it did, then only Congress can repeal the doctrine. If it were determined that the fairness doctrine was not codified, Congress could, of course, step in and resolve the matter by amending Section 315.

Question. What is Mr. Patrick's current position on structural regulation and concentration in media ownership?

Answer. I am a strong supporter of diversity in broadcast media ownership. To this end, I support continued close scrutiny of multiple ownership. Rules like duopoly and one-to-a-market seem particularly appropriate to ensuring that broadcast markets are characterized by diversity and competition in the marketplace of ideas. However, rigid rules precluding ownership without reference to the relevance broadcast market, actual concentration and new sources of competition may create artificial barriers to entry, preclude economies of scale, and stifle the competition and diversity they were designed to promote. As such, I believe the Commission's ownership rules should be examined periodically in light of the changing communications marketplace and with constant reference to the Commission's goal of preserving diversity and protecting the public interest. In reexamining rules related to ownership restrictions, it is incumbent on the Commission to consider the effect that repeal or modification will have on opportunities for minority ownership. In analyzing the effects of modifying or eliminating the 7–7–7 rule, for example, we will need to weigh the argument that repeal will cause prices to increase such that they are out of range of most minorities against the argument that the scramble to buy into the top markets will result in increased sales in other markets that will open up opportunities for minority ownership not currently existing. In addition, it is argued that repeal of the 7–7–7 rule and modification of the Commission's attribution rule might make it easier for minorities to acquire investors seeking equity interest in broadcast properties. I intend to study these and related arguments closely so that I may reach a decision in the ownership rulemakings that will not impede minority ownership efforts.

Question. What is the EEO record of the agencies for which Mr. Patrick was responsible in his prior position?

Answer. As Associate Director of Presidential Personnel at the White House, I was responsible for helping to recruit and interview candidates for presidential appointments at specified agencies. The hiring authority for personnel below the presidential appointment level rests with the agency itself. As our office was not responsible for this hiring, I am not familiar with the statistics relating to each agency's EEO record.

With respect to presidential appointments, I made affirmative efforts to identify and recruit qualified minorities and women as candidates for presidential appointments. It was the policy of the White House, and my personal policy, to attempt to insure that minorities and women were included in each group of candidates that our office referred to senior White House staff and the President for each position. To further this effort, I helped to establish Black, Hispanic, and female recruitment task forces. These groups were comprised of minorities and women then serving in high ranking Administration positions. They were charged with the specific responsibility of identifying minorities and women whom we thereafter could refer for consideration. Through personal efforts, and with the assistance of these task forces, we were able to identify and recruit a good number of minorities and women, many of whom were subsequently appointed to high ranking positions.

As I have stated before, I have been and I remain a firm supporter of affirmative action. I intend to continue this policy of support for affirmative action in hiring if confirmed as a Commissioner on the Federal Communications Commission.

Senator GOLDWATER. That particular part of the committee meeting will be closed.

[Whereupon, at 9:40 a.m., the committee recessed.]

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